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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 KEVIN L. HENDRICKSON,

10 Plaintiff,

11 v.

12 THURSTON COUNTY, et al.,

13 Defendants.

CASE NO. C06-5374BHS

ORDER DENYING  
PLAINTIFF'S MOTION TO  
RECONSIDER AND  
DISMISSING PLAINTIFF'S  
STATE LAW CLAIMS  
WITHOUT PREJUDICE

14 This matter comes before the Court on Plaintiff's Motion to Reconsider (Dkt. 189)  
15 and the parties' responses to the Court's order to show cause regarding the remaining  
16 state claims (Dkts. 187 and 188). The Court denies the motion to reconsider and dismisses  
17 Plaintiff's remaining state claims without prejudice for the reasons stated herein.

18 **I. MOTION TO RECONSIDER**

19 On December 10, 2008, the Court issued an order dismissing Plaintiff's federal  
20 claims ("the Order"). Dkt. 186. On December 22, 2008, Plaintiff filed a motion to  
21 reconsider. Dkt. 189.

22 Motions for reconsideration are governed by Local Rule CR 7(h), which provides  
23 as follows:

24 Motions for reconsideration are disfavored. The court will ordinarily deny  
25 such motions in the absence of a showing of manifest error in the prior  
26 ruling or a showing of new facts or legal authority which could not have  
27 been brought to its attention earlier with reasonable diligence.  
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1 Local Rule CR 7(h)(1). Plaintiff seeks reconsideration on the basis of manifest error. Dkt.  
2 189.

3 As a threshold matter, the Court notes that a motion for reconsideration is not a  
4 substitute for filing a reply on the underlying motion. Plaintiff's 31-page motion for  
5 reconsideration mainly repeats arguments that the Court already addressed in the Order.

6 The Court denies Plaintiff's motion because he fails to make a showing that the  
7 Court committed manifest error in dismissing his claims. Plaintiff first maintains that the  
8 Court erred in dismissing his Fourth Amendment claim against Defendant Romaine for  
9 his impoundment of the vehicles, and contends that "[t]he Court failed to discuss or  
10 analyze Plaintiff's impoundment/seizure claim against Defendant Romaine under the  
11 Fourth Amendment, and only provided analysis under the Fourteenth Amendment for the  
12 pre-impoundment notice." Dkt. 189 at 2. Plaintiff also maintains that the Court erred by  
13 dismissing Plaintiff's claim that Officer Romaine violated his constitutional rights by  
14 failing to provide him with pre-impoundment notice. *Id.*, 25-28. Plaintiff goes so far as to  
15 pose the following question: [w]hat if it was not [Plaintiff], and instead it was a judge,  
16 who had no knowledge that the VIN was incorrectly registered with the DOL, resulting in  
17 the VIN on the license plate being different from the VIN on the truck[?]." *Id.* at 27. The  
18 Court addressed Plaintiff's claims relating to the seizure and pre-impoundment notice in  
19 the Order:

20 Officer Romaine's impounding of these vehicles did not violate Mr.  
21 Hendrickson's constitutional rights. Mr. Hendrickson's arguments focus  
22 primarily on the issue of whether the police are required to provide pre-  
23 impound notice to an owner of a vehicle when a vehicle is impounded  
24 because of "switched plates." Mr. Hendrickson mischaracterizes the  
25 impounding of the truck as being based solely on a "traffic infraction."  
26 While Officer Romaine testified that he had the vehicles impounded based  
27 on "switched plates," he also testified that ownership of the vehicles had  
28 not been established and that Mr. Hendrickson had already been arrested for  
possession of the stolen trailer. Defendants contend that the seizure was  
proper because Mr. Hendrickson had already been arrested for possession  
of a stolen trailer, and because the VIN affixed to the truck was not  
registered to Mr. Hendrickson. Additionally, neither the Pontiac nor the car  
hauler came back registered to Mr. Hendrickson.

Mr. Hendrickson has not demonstrated that he was entitled to pre-  
impoundment notice. There is no dispute that, at the time of the impound,

1 none of the actual VIN numbers were registered to Mr. Hendrickson. **In**  
2 **addition, based on the arrest for possession of the stolen trailer, as well**  
3 **as the discrepancy in the registration of the truck, Officer Romaine had**  
4 **probable cause to believe that the truck, Pontiac, and car hauler were**  
5 **not owned by Mr. Hendrickson and may have been stolen. See *Brown*,**  
*supra* [U.S. v. Brown, 535 F.2d 424, 428 (8th Cir. 1976)]. **Alternatively,**  
6 **the officer's seizure was proper in order to safeguard property that**  
7 **may have belonged to a third party. See *Jamerson*, *supra* [United States**  
8 *v. Jamerson*, 549 F.2d 1263, 1271 (9th Cir. 1977)].

9 Dkt. 186, 21-22 (emphasis added).

10 Plaintiff offers no argument or authority that demonstrates that the Court erred by  
11 concluding that Officer Romaine's seizure was supported by probable cause, nor has  
12 Plaintiff demonstrated that the Court erred by concluding that Officer Romaine's seizure  
13 did not violate clearly established law. The Court properly concluded that Officer  
14 Romaine was entitled to qualified immunity.

15 Plaintiff next argues that the Court erred in concluding that there was no Fourth  
16 Amendment violation based on the search of the truck. Plaintiff again fails to demonstrate  
17 that the Court committed manifest error in concluding that Officer Romaine did not  
18 violate Plaintiff's constitutional rights by searching the truck, nor has Plaintiff  
19 demonstrated that the Court erred by concluding that the officer is entitled to qualified  
20 immunity.<sup>1</sup>

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21 <sup>1</sup> Plaintiff cites *State v. Simpson*, 95 Wn.2d 170 (1980), in support of his contention that  
22 the search and seizure violated his constitutional rights. The court in that case found a search of a  
23 vehicle to be unlawful when the officer entered the car without a warrant to search for the VIN  
24 number. In contrast, Officer Romaine observed the VIN from the outside of the truck. Given the  
25 circumstances, this Court concluded that Officer Romaine had probable cause to enter the  
26 vehicle after he determined that Plaintiff was not registered to any of the vehicles based on the  
27 VIN numbers and after he discovered the discrepancy between the VIN of the truck and the VIN  
28 associated with the license plate. Officer Romaine was justified in seizing the property because  
ownership had not been established, and because he had probable cause to believe the vehicles  
may have been stolen.

Plaintiff also contends that *U.S. v. \$277,000 U.S. Currency*, 941 F.2d 898 (9th Cir. 1991),  
supports his argument that this Court erred by concluding that Officer Romaine was entitled to  
qualified immunity. The facts of *\$277,000 U.S. Currency* are inapposite to the facts of the instant  
case. In *\$277,000 U.S. Currency*, the officers removed a car cover to observe the VIN numbers;  
in contrast, Officer Romaine observed the truck VIN number from the outside of the vehicle,  
through the front window. Moreover, the officers in *\$277,000 U.S. Currency* did not have

1 Plaintiff has repeatedly argued in briefings and the instant motion that the search  
2 and seizure of the truck violated his constitutional rights because “switched plates” is  
3 only a “traffic infraction.” But the search and seizure of the vehicle cannot be viewed in  
4 isolation as having been based solely on the fact that the officer discovered that the VIN  
5 number of the truck did not match the VIN number registered to the license plate. In other  
6 words, Officer Romaine did not simply come across the vehicles and decide to search the  
7 truck and impound the vehicles. Rather, Plaintiff had just been arrested for possession of  
8 stolen property that was a licensed vehicle, he had been seen driving the truck which  
9 towed the trailer and Pontiac, none of the vehicles were registered to Plaintiff as  
10 recognized by Washington law, and the VIN number on the truck did not match the VIN  
11 number associated with the license plate when Officer Romaine observed the VIN  
12 number from outside of the vehicle. Under the circumstances in this case, Plaintiff fails to  
13 demonstrate that any clearly established law prohibited Officer Romaine’s search or  
14 seizure of the vehicles. Plaintiff’s arguments were addressed in the Order:

15 Mr. Hendrickson’s other arguments in support of his motion for  
16 summary judgment are also unavailing. First, Mr. Hendrickson offers no  
17 legal authority that supports his contention that a vehicle must be reported  
18 stolen to give rise to probable cause that a vehicle does not belong to the  
19 individual driving the vehicle. Second, as to Mr. Hendrickson’s claim that

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19 probable cause to believe the vehicles had been stolen. The officers in that case responded to a  
20 report of loud music. Plaintiff, in contrast, had just been arrested for possession of a stolen trailer  
21 and was driving a truck that towed a trailer and a car, none of which were registered to Plaintiff.

22 Plaintiff also cites cases that address the issue of when a police officer is required to  
23 provide pre-impoundment notice. None of these cases have held that an officer is required to  
24 provide such notice when the officer has probable cause to believe that the vehicle has been  
25 stolen. *See, e.g.*, Dkt. 188 at 26 (citing *Clement v. City of Glendale*, 518 F.2d 1090 (9th Cir.  
26 2008)) (due process required pre-impound notice to owner of vehicle, where no probable cause  
27 existed to believe that the vehicle had been stolen). Again, while Plaintiff would like to isolate  
28 the facts of his case to the officer’s discovery of the discrepancy between the VIN numbers, the  
Court considered all of the circumstances surrounding the impoundment. After Plaintiff had been  
arrested for possession of a stolen trailer, and the officer discovered that Plaintiff owned none of  
the vehicles as reflected by Department of Licensing records, and that the VIN on the truck did  
not match the VIN on the license plate, the officer made a reasonable inference that Plaintiff may  
have placed a valid license plate on a stolen truck. Certainly, the officer’s reaching of this  
conclusion and searching and impounding the truck did not violate any clearly established law.

1 the search for evidence of ownership was unreasonable, it may not have  
2 been sufficient for Officer Romaine to rely solely on the report that indicated  
3 the true owner of this vehicle resided in Texas because there was a  
4 discrepancy between the license plate and the VIN. Officer Romaine acted  
5 properly by searching for evidence to resolve the discrepancy and determine  
6 the lawful owner of the truck. Third, Mr. Hendrickson's contention that  
7 Officer Romaine should have asked Mr. Hendrickson about the discrepancy  
8 in the VIN and the license plate to resolve the issue of ownership is devoid  
9 of merit. In light of the fact that Mr. Hendrickson had just been arrested for  
10 possession of the stolen trailer, Officer Romaine can hardly be expected to  
11 rely on Mr. Hendrickson's own statements in order to determine the truck's  
12 rightful owner.

13 Officer Romaine is also entitled to qualified immunity because no  
14 clearly established constitutional right was violated. Even if he conducted  
15 the search without probable cause, or if the community caretaking function  
16 did not apply, the Court concludes that under these circumstances, a  
17 reasonable officer in his position would not have believed the search  
18 violated Mr. Hendrickson's constitutional rights.

19 Dkt. 186, 20-21 (summary judgment order, addressing Plaintiff's claim that the search of  
20 the truck violated his constitutional rights).

21 Plaintiff also states that Officer Romaine admitted that his only basis for the search  
22 and seizure was a statute that makes it a traffic infraction to drive a vehicle that has  
23 switched plates. Dkt. 189 at 7. Even if this were Officer Romaine's sole subjective basis  
24 for the search, courts evaluate probable cause on an objective basis, and the officer's  
25 subjective motivation is irrelevant. *See Whren v. United States*, 517 U.S. 806, 813 (1996)  
26 (probable cause is not dependent on an officer's subjective motivation). Plaintiff has  
27 failed to demonstrate that under these circumstances, probable cause was lacking. The  
28 Court did not commit manifest error in determining that, under the totality of the  
circumstances, there was probable cause to believe that Plaintiff did not own the vehicles  
or that the vehicles had been stolen. The Court certainly did not err in concluding that  
Officer Romaine is entitled to qualified immunity.

Finally, to the extent Plaintiff's counsel's suggestion that the Court would have  
reached a different conclusion had Plaintiff been a judge is worthy of a response, the  
Court submits a simple answer. The Court did not error in concluding that Plaintiff's  
federal claims fail, regardless of whether he was a judge, an attorney, or any other  
individual.

## II. RESPONSES TO ORDER TO SHOW CAUSE

On December 10, 2008, the Court ordered the parties to show cause, if any, why the Court should maintain jurisdiction over Plaintiff's remaining state claims. Dkt. 186. Both parties move the Court to maintain jurisdiction over Plaintiff's remaining state claims. Dkts. 187 and 188.

Plaintiff originally filed this action in this Court. Dkt. 7. The Court has dismissed all of Plaintiff's federal claims. Dkt. 186. The Court did not address Defendants' motion to dismiss Plaintiff's negligence claim and his conversion claim. *Id.* The Court also did not dismiss Plaintiff's false imprisonment and false arrest claim as it pertained to the outstanding warrant. *Id.*, 25-26 (dismissing all claims based on the arrest for possession of stolen property).

Under 28 U.S.C. § 1367, a federal court may assume supplemental jurisdiction over all other claims that are so related to claims in the action within the original jurisdiction so that they form part of the same case or controversy. The Court may decline to exercise this supplemental jurisdiction if (1) the claim raises a novel or complex issue of state law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c).

*United Mine Workers v. Gibbs*, 83 U.S. 715 (1966), first announced the discretionary doctrine of the district court's exercise of pendent jurisdiction over state law claims. Later, in *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 (1988), the Supreme Court held that the district court should "consider and weigh in each case, at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendant state law claims." (Relying on *Gibbs*, *supra*). 28 U.S.C. § 1367 now

1 governs the exercise of supplemental jurisdiction, including ancillary and pendent  
2 jurisdiction, and lists some of the discretionary factors enunciated by *Gibbs* to guide the  
3 district court in exercising supplemental jurisdiction over state law claims. The Ninth  
4 Circuit clarified the district court's process of exercising its discretion in *Executive*  
5 *Software v. U.S. Dist. Court*, 24 F.3d 1545 (9th Cir. 1994). There, the court held that  
6 once a district court identifies that a factual predicate in a case corresponds to one of the  
7 factors in § 1367(c), the district court must consider "whether remanding the pendent  
8 state claims comports with the underlying objective of 'most sensibly accommodat[ing]'  
9 the values of 'economy, convenience, fairness, and comity.'" *Id.* at 1557 (citations  
10 omitted).

11 The Court declines to exercise supplemental jurisdiction over Plaintiff's remaining  
12 state law claims. Dkt. 137 (Defendants' motion for summary judgment of Plaintiff's state  
13 law claims). The Court has dismissed all claims under which it has original jurisdiction,  
14 leaving only Plaintiff's claims for negligence, conversion, and false imprisonment/false  
15 arrest. The Court concludes that the remaining state law claims are more appropriately  
16 addressed in state court. Although this case is in its late stages of litigation, the remaining  
17 claims involve state law and can be most properly decided in the state court. A state court  
18 may determine whether Plaintiff has an ownership interest in any of the vehicles, and  
19 whether any remedies are available.

20 Defendants also maintain that all claims against Officers Budinich and Romaine  
21 should be dismissed. Defendants contend that Plaintiff failed to allege any state law  
22 claims against Officer Budinich in his response to Defendants' motion to dismiss the state  
23 law claims. Dkt. 187 at 4 (citing Dkt. 160). Plaintiff appears to have alleged state law  
24 claims against both officers. *See* Dkt. 60, 7-8 (Plaintiff's third amended complaint). The  
25 Court did not address Plaintiff's state law claims in the Order, and a state court may  
26 determine whether these claims should be dismissed.

1 Defendants also maintain that the because the Court determined that Officer  
2 Romaine “was justified in impounding the vehicles,” the negligence and conversion  
3 claims should be dismissed. A state court can also address this issue.

4 The Court dismisses Plaintiff’s state law claims without prejudice so that he may  
5 file these claims in state court.

### 6 **III. ORDER**

7 Therefore, it is hereby

8 **ORDERED** that Defendant’s Motion to Reconsider (Dkt. 189) is **DENIED**. It is  
9 further **ORDERED** that the Court **DECLINES** to exercise supplemental jurisdiction over  
10 Plaintiffs’ remaining state law claims. Plaintiff’s remaining state law claims are  
11 **DISMISSED WITHOUT PREJUDICE**.

12 DATED this 30<sup>th</sup> day of December, 2008.

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16 BENJAMIN H. SETTLE  
17 United States District Judge  
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